

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARYANN WITKOWSKI, o/b/o K.C.,

Plaintiff,

DECISION AND ORDER

06-CV-6642L

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

This action was commenced pursuant to 42 U.S.C. § 405(g) to appeal the final determination of the Commissioner of Social Security (“Commissioner”) that plaintiff’s child was not disabled under the Social Security Act (“Act”) and therefore not entitled to either disability insurance benefits or supplemental security income benefits.

Both sides filed motions for judgment on the pleadings. The case was referred to United States Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b) to review the motions and the record and to submit a Report and Recommendation to the Court as to how those motions should be resolved.

On January 10, 2007, Magistrate Judge Scott issued a thorough, 19-page Report and Recommendation (Dkt. #13). In sum, Magistrate Judge Scott recommended that the final decision of the Commissioner be reversed and the matter be remanded solely for the calculation and payment of benefits.

The Commissioner did not file any objections to Magistrate Judge Scott's Report and Recommendation.

The issue before the ALJ and before this Court is whether the Commissioner's decision to deny benefits is supported by substantial evidence. Magistrate Judge Scott carefully set out the standards controlling review by this Court, as well as the legal test for determining disability of a minor. In this case, plaintiff claims that her child, because of Attention Deficit Hyperactivity Disorder and other infirmities, suffers from both learning and speech impairments. Plaintiff claims that the record supports a finding that the child has severe functional limitations.

Magistrate Judge Scott, after summarizing the medical, psychological and educational evidence, carefully and accurately set out the requirements necessary for a plaintiff to demonstrate entitlement to Social Security benefits on behalf of a minor. The analysis concerning disability of a child is guided by the Regulations at 20 C.F.R. § 416.926a(a) and (b). There are six "domains" that are used to evaluate a child's functioning and these are set out in full by Magistrate Judge Scott at page 11 of his Report and Recommendation.

In this case, the ALJ determined that the minor child did not meet the Appendix 1 listings and that she had less than "marked" limitations in each of the six relevant domains. Magistrate Judge Scott disagreed and believed there was not substantial evidence to support that decision. I agree.

I agree with Magistrate Judge Scott's determination that the record amply supports a finding that the minor child had at least a marked limitation in the domain of "acquiring and using information." Magistrate Judge Scott also determined that the record supports a finding that the child had at least a marked limitation with respect to her ability to attend and complete tasks.

Magistrate Judge Scott also determined that there was evidence that the child had a marked limitation in two other domains, the ability to care for herself and the ability to move about and manipulate objects.

I concur with Magistrate Judge Scott's decision and I accept and adopt his Report and Recommendation. I believe the ALJ's decision is not supported by substantial evidence. I agree with Magistrate Judge Scott that the record is complete and the record does support plaintiff's application for benefits on behalf of her child and that no further purpose would be served by a remand to further develop the record.

CONCLUSION

I accept and adopt the recommendation of United States Magistrate Judge Hugh B. Scott (Dkt. # 13). The decision of the Commissioner denying benefits is reversed. The Commissioner's motion for judgment on the pleadings (Dkt. # 6) is denied. Plaintiff's motion for judgment on the pleadings (Dkt. # 9) is granted. The case is remanded to the Commissioner solely for the calculation and payment of benefits.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 5, 2007.